

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 312 19 97

Bill H 65 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 10 ☒ C

Jan 17 ☒ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 11 ☒ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

HB 64

INTRODUCED BY EWER

LC0197 DRAFTER: CAMPBELL

ELIMINATE THE REQUIREMENT FOR AN AUDIT OF A LOCAL GOVERNMENT
ENTITY RECEIVING FEDERAL FINANCIAL ASSISTANCE IN EXCESS OF
\$25,000

BY REQUEST OF DEPARTMENT OF COMMERCE

12/19	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FISCAL NOTE RECEIVED		
1/06	FIRST READING		
1/06	REFERRED TO LOCAL GOVERNMENT		
1/07	FISCAL NOTE PRINTED		
1/21	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/27	2ND READING PASSED	90	7
1/28	3RD READING PASSED	89	9
	TRANSMITTED TO SENATE		
1/29	FIRST READING		
1/29	REFERRED TO LOCAL GOVERNMENT		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	50	0
3/13	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/19	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 91		
	EFFECTIVE DATE: 03/19/97		

HB 65

INTRODUCED BY MENAHAN

LC0275 DRAFTER: MACMASTER

INCREASE THE PENALTY FOR NEGLIGENT VEHICULAR ASSAULT THAT
RESULTS IN SERIOUS BODILY INJURY TO ANOTHER

12/19	INTRODUCED		
12/26	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/06	REFERRED TO JUDICIARY		
1/07	FISCAL NOTE RECEIVED		
1/09	FISCAL NOTE PRINTED		
1/10	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/23	2ND READING PASSED AS AMENDED	94	0
1/25	3RD READING PASSED	94	1
	TRANSMITTED TO SENATE		
1/27	FIRST READING		
1/27	REFERRED TO JUDICIARY		
3/11	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	49	0
3/15	3RD READING CONCURRED	45	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	94	4
4/11	3RD READING CONCURRED AS AMENDED	91	6
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		

4/21 SIGNED BY GOVERNOR
CHAPTER NUMBER 317
EFFECTIVE DATE: 10/01/97

HB 66 INTRODUCED BY COCCHIARELLA LC0127 DRAFTER: HEFFELFINGER

ESTABLISH A CHILD-CARE RESOURCE AND REFERRAL AND CHILD-CARE
IMPROVEMENT GRANT PROGRAM

BY REQUEST OF JOINT OVERSIGHT COMMITTEE ON CHILDREN & FAMILIES

12/19	INTRODUCED		
1/06	FIRST READING		
1/06	REFERRED TO HUMAN SERVICES & AGING		
1/10	HEARING		
1/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/25	2ND READING PASSED	54	44
1/27	3RD READING PASSED	56	42
	TRANSMITTED TO SENATE		
1/28	FIRST READING		
1/28	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/07	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED		
3/03	2ND READING CONCURRED	32	17
3/04	3RD READING CONCURRED	41	7
	RETURNED TO HOUSE		
3/10	SIGNED BY SPEAKER		
3/11	SIGNED BY PRESIDENT		
3/13	TRANSMITTED TO GOVERNOR		
3/21	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/08	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	85	14
4/09	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	74	25
	SENATE		
4/10	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/11	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/15	SIGNED BY SPEAKER		
4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR CHAPTER NUMBER 318 EFFECTIVE DATE: 04/21/97		

HB 67 INTRODUCED BY COBB

LC0297 DRAFTER: NISS

PROHIBIT FUTURE INCREASES IN GENERAL FUND APPROPRIATIONS FOR
THE MONTANA MEDICAID PROGRAM BY THE USE OF PROGRAM
TRANSFERS OR SUPPLEMENTAL APPROPRIATIONS

12/19	INTRODUCED
12/26	FISCAL NOTE REQUESTED
1/06	FIRST READING
1/06	REFERRED TO APPROPRIATIONS
1/13	FISCAL NOTE RECEIVED
1/16	FISCAL NOTE PRINTED
2/12	TABLED IN COMMITTEE
3/28	MISSED DEADLINE FOR 67TH DAY TRANSMITTAL DIED IN COMMITTEE

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0065, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act increasing the penalty for negligent vehicular assault that results in serious bodily injury to another.

ASSUMPTIONS:

1. Serious bodily injury is defined in statute 45-2-101.59, MCA, to include risk of death; therefore, all cases of negligent vehicular assault are assumed to be serious.
2. The number of cases per year was derived using the average number of offenses to date committed under 45-5-205, MCA, as reported by the Motor Vehicle Division of the Department of Justice over a two-year period (1995-1996). This average is 7 cases per year.
3. The Department of Corrections (DOC) assumes that the offenders sentenced for negligent vehicular assault would be sentenced for the maximum term of five years but would serve two years in prison.
4. This bill could result in more appeals to the state funded Judiciary; however, the anticipated increase in expenditures is not significant. This bill will impact expenditures of DOC.
5. The DOC would incur the cost of imprisonment for 7 additional offenders each year (using fiscal year 1996 costs, including outside medical costs). Fiscal year 1998 expenditures would be for 7 inmates at a daily cost of \$44.47 per day. Fiscal year 1999 cost would be for 14 inmates at a daily cost of \$44.47 per day.

FISCAL IMPACT:Expenditures:

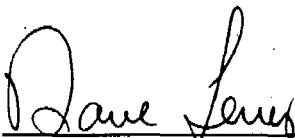
	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Inmate care & custody	113,621	227,242

Funding:

General Fund (01)	113,621	227,242
-------------------	---------	---------

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

As a result of this bill the prison population would increase by about 14 inmates. As these inmates complete their prison term, there would also be increased costs for pre-release and parole services.

 1-7-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 RED MENAHAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0065, as introduced

HB 65

Proponents:

DIANA LIEBINGER-KOCH, Department of Corrections - EXHIBITS 1 & 2
{Tape: 1; Side: A; Approx. Time Count: 9.2 - 15.6}

CHRIS MILLER, POWELL COUNTY ATTORNEY
{Tape: 1; Side: A; Approx. Time Count: 15.7 - 20.5}

JOHN CONNOR, DEPARTMENT OF JUSTICE - EXHIBIT 3
{Tape: 1; Side: A; Approx. Time Count: 20.6 - 21.4}

DENNIS PAXINOS, MONTANA COUNTY ATTORNEY ASSOCIATION
{Tape: 1; Side: A; Approx. Time Count: 21.5 - 22.6}

Opponents: NONE

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 22.7 - Tape 1, Side B, 1.4; Comments: Members of the committee asked questions of the witnesses.}

Closing by Sponsor: REPRESENTATIVE BANKHEAD

{Tape: 1; Side: B; Approx. Time Count: 1.4 - 3.6}

HEARING ON HB 44

Sponsor: REP. CHARLES DEVANEY

{Tape: 1; Side: B; Approx. Time Count: 4.0 - 10.0; Comments: Sponsor opened the hearing.}

Proponents:

LOIS ADAMS, DEPARTMENT OF CORRECTIONS
{Tape: 1; Side: B; Approx. Time Count: 10.0 - 11.5.}

Opponents: NONE

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 11.9 - Tape 2; Side A; 10.7; Comments: Members of the committee questioned witnesses.}

Closing by Sponsor: REPRESENTATIVE DEVANEY

{Tape: 2; Side: A; Approx. Time Count: 13.3 - 15.6}

HEARING ON HB 65

Sponsor: REP. WILLIAM "RED" MENAHAN

{Tape: 2; Side: A; Approx. Time Count: 15.9 - 17.6; Comments: Sponsor opened the hearing.}

Proponents:

VICKIE FRAZIER, LEWIS & CLARK COUNTY ATTORNEY
{Tape: 2; Side: A; Approx. Time Count: 18.2 - 23.7}

DENNIS PAXINOS, YELLOWSTONE COUNTY ATTORNEY

{Tape: 2; Side: A; Approx. Time Count: 23.8 - End of Side A}

Opponents: NONE

Questions From Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Count: 0.1 - 7.1; Comments: Members of the committee asked questions of the witnesses.}

Closing by Sponsor: REPRESENTATIVE MENAHAN

{Tape: 2; Side: B; Approx. Time Count: 7.2 - 8.4; Comments: Sponsored closed.}

HEARING ON HB 29

Sponsor: REP. JOHN BOHLINGER

{Tape: 2; Side: B; Approx. Time Count: 8.5 - 10.1; Comments: The continuation of the hearing on HB 29 was opened by the sponsor.}

Proponents:

DAVE WARD, BILLINGS POLICE DEPARTMENT

{Tape: 2; Side: B; Approx. Time Count: 10.2 - 13.0}

DENNIS PAXINOS, YELLOWSTONE COUNTY ATTORNEY

{Tape: 2; Side: B; Approx. Time Count: 13.2 - 17.0}

CHARLES BROOKS, BILLINGS CHAMBER OF COMMERCE

{Tape: 2; Side: B; Approx. Time Count: 17.3 - 19.7}

VICKIE SODERBERG - EXHIBIT 4

{Tape: 2; Side: B; Approx. Time Count: 19.8 - 24.2}

Opponents:

ROYAL A. DAVIS, ATTORNEY - EXHIBIT 5

{Tape: 3; Side: A; Approx. Time Count: 0.1 - 1.8}

Questions From Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Count: 1.9 - Side B 18.2; Comments: Members of the committee questioned witnesses.}

Closing by Sponsor: REPRESENTATIVE BOHLINGER - EXHIBITS 6, 7, AND 8

{Tape: 3; Side: B; Approx. Time Count: 18.3 - End of Side B}

Motion/Vote:

REP. DIANA WYATT MOVED TO ADJOURN, REPRESENTATIVE DANIEL MC GEE SECONDED. THE MOTION CARRIED BY UNANIMOUS VOTE.

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 4/10/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER 9:15	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 1/10/97

BILL NO. HB 65 SPONSOR(S) Rep. Menahan

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dennis Paxinos	Mt. Co Atty Assoc	X	
John Connor	Dept of Justice	Y	
Uchi: [unclear]	LA CCL [unclear] Atty Office	X	

{Tape: 2; Side: A; Approx. Time Count: 17.9 - 20.0; Comments: Appeared as a proponent, signed in as informational witness.}

BOB GILBERT, Montana Magistrates Association

{Tape: 2; Side: A; Approx. Time Count: 20.1; Comments: Appeared as a proponent, signed in as informational witness.}

Questions From Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Count: 21.9 - 27.6}

Closing by Sponsor: REPRESENTATIVE BARNHART

{Tape: 2; Side: A; Approx. Time Count: 27.8 - 28.8}

EXECUTIVE ACTION ON HB 65

Motion: REP. SHIELL ANDERSON moved HB 65 DO PASS.

{Tape: 2; Side: B; Approx. Time Count: 0.1}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 0.2 - 17.0}

Motion/Vote: REP. BOHARSKI moved to Table HB 65. The motion failed, 9 - 11.

Motion: REP. BRAD MOLNAR moved to amend HB 65.

{Tape: 2; Side: B; Approx. Time Count: 19.2 - 24.2}

Discussion:

{Tape: 2; Side B; Approx. Time Count: 24.3 - 26.3}

Vote: The motion failed 1 - 19, REP. MOLNAR voting yes.

Motion: REP. JOAN HURDLE moved to amend HB 65.

{Tape: 2; Side: B; Approx. Time Count: 27.0 - 28.3}

Discussion:

{Tape: 2; Side: B; Approx. Time Count: 28.4 - Tape 3; Side A; 1.4}

Vote: The motion failed by tie vote, 10 - 10.

Discussion:

{Tape: 3; Side: A; Approx. Time Count: 3.0 - 15.7}

Motion: REP. BOHARSKI moved to amend HB 65 on page 1, line 19 to strike "imprisoned in the state prison" and insert "incarcerated."

{Tape: 3; Side: A; Approx. Time Count: 15.8 - 16.5}

Discussion:

{Tape: 3; Side: A; Approx. Time Count: 16.6 - 24.8}

Vote: The motion to amend HB 65 as above carried by unanimous vote.

Motion: REP. BOHARSKI moved HB 65 DO PASS AS AMENDED.
{Tape: 3; Side: A; Approx. Time Count: 26.1 - 26.4}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 26.5 - 27.5}

Vote: The motion carried by unanimous vote.
{Tape: 3; Side: A; Approx. Time Count: 28.0 - 28.4}

EXECUTIVE ACTION ON HB 24

Motion: REP. ANDERSON MOVED HB 24 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 0.1 - 0.8}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 0.9 - 1.7}

Vote: The motion carried, 19 - 1, REP. BOHARSKI voted no.

EXECUTIVE ACTION ON HB 122

Motion: REP. DAN MC GEE moved HB 122 DO PASS.
{Tape: 3; Side: B; Approx. Time Count: 2.5 - 2.9}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 3.0 - 12.2}

Motion/Vote: REP. MC GEE moved to amend HB 122. The motion carried 17 - 1, REP. WYATT voted no.
{Tape: 3; Side: B; Approx. Time Count: 13.3; Comments: One representative had left the room and did not vote.}

Motion: REP. MC GEE moved HB 122 DO PASS AS AMENDED.

Motion: REP. KOTTEL moved to amend HB 122 by striking section 1.
{Tape: 3; Side: B; Approx. Time Count: 13.9 - 17.2; Comments: This amendment was later withdrawn as indicated below.}

{Tape: 3; Side: B; Approx. Time Count: 17.3 - 20.9; Comments: Rep. Anderson proposed a substitute amendment and Rep. Kottel withdrew her amendment.}

Motion: REP. MC GEE moved a substitute amendment.
{Tape: 3; Side: B; Approx. Time Count: 21.0}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 21.4 - 23.6}

Vote: The motion on the substitute amendment carried 17 - 1.

Motion: REP. BOHARSKI moved HB 122 DO PASS AS AMENDED.
{Tape: 3; Side: B; Approx. Time Count: 24.3}

Discussion:

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 1/17/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS		✓	
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		



HOUSE STANDING COMMITTEE REPORT

January 17, 1997

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 65** (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 19.

Strike: "imprisoned in the state prison"

Insert: "incarcerated"

-END-

Committee Vote:

Yes 20, No 0.

1/20 11:25
mg
111443SC.Hgd

HEARING ON HB 65

Sponsor: REP. WILLIAM T. "RED" MENEHAN, HD 57, Anaconda

Proponents: John Connor, Montana County Attorneys Association
Vicki Fraser, Montana County Attorney Associations

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: a; Approx. Time Count: 10:02; Comments: .}

REP. WILLIAM T. "RED" MENEHAN, HD 57, Anaconda, introduced HB 65. This bill involved negligent vehicular assault which results in serious bodily injury. If you punch someone, that could be assault. If they lost their eye, there would be a further extension of the law and that is what this bill would accomplish. When someone is at fault in a car accident and there is a serious injury, the person causing the accident, being under the influence of alcohol, would cause this bill to go into effect. Now this is a misdemeanor and the injured person could be left crippled for life.

Proponents' Testimony:

{Tape: 2; Side: a; Approx. Time Count: 10:05; Comments: .}

John Connor, Montana County Attorneys Association, spoke in favor of HB 65. He was asked to appear by the Ravalli County Attorney, George Corn, to point out the importance of this bill. The problem arises all too frequently wherein a DUI occurs and someone suffers a serious injury but there isn't any way to deal with it between convicting a person of DUI on one hand or on the other hand negligent homicide if the victim dies. This would create an interim penalty for serious bodily injury. He presented a handout, EXHIBIT 5. Mr. Corn prosecuted a case entitled State v. Lambert in which a nine time DUI offender drove the wrong way down Highway 93 and collided with a woman and three children. No one was killed but they all suffered serious injuries. He charged the defendant with criminal endangerment, a felony, for knowingly engaging in conduct which creates a substantial risk of death. The defendant was convicted. The conviction was overturned on appeal. The Supreme Court held that the jury was improperly instructed on the definition of knowingly because all the alternatives in the statute had been given to the jury. The court said that the state had the obligation of proving that the defendant knew it was highly probable that he would run into the car when he got into his car. That is virtually impossible. Criminal endangerment is not available to prosecutors. This bill would require the proof that the defendant was under the influence of alcohol, that he drove in a negligent manner, and that he caused serious bodily injury. They would not have to prove that when he got into the car he was

going to cause a specific injury. The court, in its dissent, noted that this person also had 36 serious driving violations in addition to the 9 DUIs. An amendment was put on in the House which mandates a suspended sentence and requires that the crime and restitution be imposed. That amendment may have been precipitated by the fact that the fiscal note states that all offenses charged under this would be the more serious subsection (3) offenses. That is not correct. The fiscal note presumes that they would be that way because all of the offenses would include risk of death. That is not the case. All negligent vehicular assault cases do not result in or cause serious bodily injury. This bill, in its amended form, is better than what is available now.

Vicki Fraser, Montana County Attorney Associations, stated that last year a driver impaired by alcohol, hit a vehicle which contained two 16 year old girls. Both of the girls were severely injured at the time of the accident. This was so tragic that the officers had to take turns dealing with the event on the scene because the occurrence was so horrendous. Both the girls were hospitalized and their office was faced with the problem of how to charge for this crime. They had two choices, either a DUI misdemeanor or a negligent vehicular assault which was another misdemeanor. The public rang the phones off the hook. They could not find a statute which justly fit the crime. One of the girls did die, and they charged one count of negligent homicide and one count, for the girl who survived, of negligent vehicular assault. The girl who survived has gone through quite lengthy rehabilitation. The crime was a felony but they could only charge a misdemeanor. They need to appropriately charge the crime. If it is only bodily injury, then it is a misdemeanor. If it is serious bodily injury, they want to be able to impose a higher penalty. The fiscal note is high.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 2; Side: a; Approx. Time Count: 10:13; Comments: .}

SEN. BISHOP asked about operating a vehicle in a negligent manner without being under the influence of anything?

Mr. Connor stated that if no one was injured, the charge would be careless or reckless driving. Under existing law if someone was injured, they could attempt to charge assault if they thought the behavior was deliberate. The bill was drawn to involve the use of alcohol in a negligent endangerment situation. Criminal endangerment does not require the use of alcohol.

SEN. BISHOP questioned the reason for differentiating between bodily injury and serious bodily injury. He felt one driver would be lucky and the other person drew a bad card. For exactly

the same conduct, there are different consequences in that one charged with a misdemeanor and the other with a felony.

Mr. Connor stated that if a person decides to take a course of action which could result in either a serious injury or a less serious injury, they are still making a conscious decision to take that course of conduct. In DUI cases people who are repeat offenders are so drunk that they do not even track with where they are. At that point of irresponsibility, the extent of injury is academic. They have assumed the behavior which allows them to be put in the position to kill someone.

SEN. MCNUTT posed the situation where someone driving 110 mph seriously injured someone, but didn't kill them, what would the charge be?

Mr. Connor answered they could charge them with negligent endangerment, 45-5-208, which is engaging in conduct that creates a substantial risk of death or serious bodily injury. That is a misdemeanor with a \$1000 fine.

SEN. GROSFIELD asked if restitution would be covered by a liability insurance policy?

Mr. Connor explained that the criminal law places primary responsibility for the payment of restitution on the defendant. Victims can get reimbursement from the Board of Crime Control. He did not know how this related to insurance.

SEN. GROSFIELD referred to the House amendment which stated that the judge shall suspend . . . He questioned the use of the word "shall" instead of "may".

REP. MENEHAN stated they looked at the fiscal note and thought it would be a burden to the taxpayer in the prison system.

SEN. GROSFIELD asked the sponsor if the word "shall" could be changed to "may".

REP. MENEHAN stated he would have no problem with that.

SEN. REINY JABS questioned why this couldn't include people who were not intoxicated?

REP. MENEHAN stated the problem arose due to intoxication.

Closing by Sponsor:

REP. MENEHAN closed on HB 65.

October of 1998 the State of Montana would lose 5% of its federal funds which would be approximately \$5.4 million. In October of 1999 that would go up to 10%.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 3; Side: a; Approx. Time Count: 10:50; Comments: .}

SEN. BISHOP asked how much alcohol it would take to raise the blood alcohol content in an average person to .02?

Ms. Nordlund stated one drink would be all it would take.

SEN. GROSFIELD, referring to the zero tolerance level in the federal act, asked if that stated .02 for youthful drivers.

Ms. Nordlund explained that states have the option of either using a .02 alcohol tolerance or a .00 alcohol tolerance. Anything in excess of .02 is out of compliance under the FCRs as they were recently adopted.

Closing by Sponsor:

REP. CAREY stated this is a tough, but reasonable, bill. It will impact young people in a way that will get their attention and should preclude a number of terrible automobile accidents resulting in deaths and injuries caused by older drunk drivers.

EXECUTIVE ACTION ON HB 65

Motion: SEN. GROSFIELD MOVED TO AMEND HB 65.

Discussion:

SEN. GROSFIELD explained that on line 22 he would like to strike "shall" and insert "may". REP. MENAHAN did not have any problem with that amendment.

vote: The MOTION CARRIED unanimously.

CHAIRMAN CRIPPEN questioned how insurance would cover under 46-18-241?

SEN. HALLIGAN answered that covered conditions of restitution.

Rus Hill, MTLA, commented that insurance cannot cover criminal acts. This is defined as a negligent act.

Motion: SEN. JABS MOVED HB 65 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. GROSFIELD commented that a drunk driver who had liability insurance and caused an accident, under this bill, would be committing a criminal act. Have we precluded the victim from getting restitution because we have now made it a criminal act and the insurance company would not have to pay?

Mr. Hill stated that comes down to the issue of a negligent criminal act. There is a victim's coalition group in Oregon which opposes making sexual abuse by psychiatrists a criminal act because they want the insurance for treatment for their people. If it were a criminal act, the insurance would not have to pay.

Ms. Nordlund felt that intentional criminal acts are excluded from insurance policies. DUI may not fall under that because a DUI is an absolute liability offense. It doesn't make any difference if you are purposely, knowingly or negligently operating a vehicle while under the influence of alcohol or drugs. You are liable under the law.

SEN. DOHERTY stated if you had liability insurance in this instance, the first claim would be a civil claim. The court could order restitution. If the damages were \$10,000 and there was a \$25,000 limit, the insurance company would deny coverage without question. They would argue they are ordered to pay for damages, but not restitution. The fight would be between the negligent party and their insurance company.

Vote: The MOTION CARRIED on voice vote with SEN. BISHOP voting no.

EXECUTIVE ACTION ON HB 68

{Tape: 3; Side: a; Approx. Time Count: 11:10; Comments: .}

Amendments: hboo6802.avl - EXHIBIT 10

Motion: SEN. HALLIGAN MOVED TO AMEND HB 68.

Discussion:

Amendment no. 2 would strike the house amendment. It is confusing to say that you are exempting someone from negligence.

SEN. BARTLETT asked how medical malpractice would stand in this bill? She thought that might be covered by the additional language on lines 20 and 21 which is all in caps. The House Committee narrowed it to liability that occurs as a result of negligence.

Mr. Ohler stated the only physician on staff would be the prison psychiatrist.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3/11/97
BILL NO. HB 65

RAVALLI COUNTY ATTORNEY
COURTHOUSE BOX 5008, HAMILTON, MT 59840
Phone (406) 375-6222 Fax (406) 375-6328

George H. Corn
County Attorney

Michael Reardon
Jennifer B. Koiles
T. Geoffrey Mahar
Deputy Attorneys

March 6, 1997

Dear Senate Judiciary Committee Member:

As you may know, in the recent case of *State v. Lambert*, December 16, 1996, the Montana Supreme Court hamstrung the law of Criminal Endangerment when used to prosecute DUI offenders who cause wrecks and hurt people. Lambert was a nine-time DUI offender driving in the wrong lane who drove head-on into a family, injuring the mother.

I have enclosed copies of two editorials from local papers that sum up the court's lamentable decision. It is particularly disappointing and disheartening to see the Court go through such contortions to relieve drinking drivers like Lambert of the responsibility for injuring people.

You can do much to correct this unfortunate decision by supporting House Bill 65, which elevates Negligent Vehicular Assault, Section 45-5-205, MCA, to a felony if serious bodily injury occurs. H.B. 65 still requires a county attorney to prove in each case that a driver was driving under the influence, driving negligently and caused serious bodily injury, before a person can be convicted of a felony. However, in many if not most cases of DUI offenders causing injuries, this is more straightforward and easier to prosecute than what the *Lambert* decision left of the Criminal Endangerment law.

H.B. 65 also brings rationality to this area of the law. Currently, as long as no one dies in a wreck caused by a DUI offender, no matter how horribly they are mangled, if the DUI is not the driver's 4th, the crime is only a misdemeanor. As a practical matter, this means there is minimal punishment or time for rehabilitation.

H.B. 65 remedies this by making the punishment more consistent with the harm caused by such drivers. As a felony, it ensures at least a five year probation as opposed to the current one year.

Senate Judiciary Committee
March 6, 1997
Page 2.

H.B. 65 has the support of the Montana County Attorneys Association. For the protection of the public, I hope you will support this reasonable and responsible change in the law.

Sincerely,



George H. Corn
Ravalli County Attorney

GHC:se

SUNDAY, DECEMBER 22, 1996

EDITORIAL DESK 523-5241

A14

▲ JAMES E. BILL PUBLISHER
▲ STEVE WOODRUFF EDITORIAL PAGE EDITOR
▲ SHELLIE NELSON ASSISTANT NEWS EDITOR
▲ MEA ANDREWS REPORTER

Opinion

ED

■ The Missoulian's wide range of newspaper columns, the independent and suggestive

MISSOULIAN EDITORIAL

Ruling defies common sense

The state Supreme Court says a drunken driver who's driving on the wrong side of the road can't be convicted of criminal endangerment unless prosecutors can prove he knew his actions were risky to others.

Good grief! Next the court majority will probably tell us the justices responsible for this ruling shouldn't be criticized on the grounds they didn't know their reasoning lacks basic common sense.

The ruling came this week in an appeal from David B. Lambert of Stevensville, convicted of criminal endangerment and sentenced to five years in prison for an August 1994 accident.

Lambert, described at the time as "blind drunk" and driving with his license suspended for a previous drunken driving conviction, was driving northbound in the southbound lane of Highway 93 when he collided with a Jeep traveling with four passengers. Miracles do happen: No one was killed.

Criminal endangerment occurs, under Montana law,

SUMMARY: Ignorance of the law may not be an excuse, but the state Supreme Court finds ignorance of common sense works as a defense.

when a person "knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another."

A 4-3 majority of the court says it isn't enough for a defendant to knowingly engage in the risky behavior. Rather, they must also understand the possible consequences of that behavior.

Responsible for this ruling are justices William Hunt Sr., Karla Gray, Terry Trieweiler and Bill Leaphart. Dissenting were justices James Nelson and Chip Erdmann and Chief Justice Jean Turnage.

The court majority effectively bought Lambert's

banal argument that he couldn't have known he was going to smash into another car when he got into his car.

Really, now.

You don't have to be very bright to get a driver's license in America. You don't even have to know how to drive very well. But is it really possible to even operate a vehicle without knowing that driving drunk and in the wrong lane creates a high probability of a wreck? As Chief Justice Turnage pointed out in a dissenting opinion, Lambert, with nine DUIs under his belt and 38 serious driving convictions on his record, "probably has had more experience as a drunken driver than anyone in Montana." Is it really necessary to prove Lambert was aware of the risk he posed? Is there anyone who puts a bottle of liquor to his lips who doesn't know the stuff can impair your judgment?

The courts used to tell us that "ignorance of the law is no excuse." But, according to the Montana Supreme Court, ignorance of common sense is.

FOOD STAMPS

Job seekers need not apply ...

Go
out
do

By MYRIAM S.
The Orlando S

T
teen-
into
except

It's sad to
aren't given a
upstanding ac
much of what
outside the n

I often hear
news - partic
reporting cr
sorts of stere
are often tho
spoiled brats,

So I was gl
one trend ab
outrageous. I
majority of te
about helping

Forget for
in teen-age dr
the so-called
important is th
volunteering t

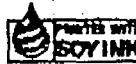
Ravalli Republic

OPINION



printed on
recycled
paper

Page 2 - Thursday, December 19, 1996



Local Residents

Rob Breeding
Tamara Johnson
Donna White
Juana Anderson
Dorinda Troutman
Lynne Dukelow
Frank M. Serwacki

Managing Editor
Advertising Manager
Business Manager
Subscription Service Mgr.
Advertising Production
Composing Manager
Production Manager

303-3300 • 1-800-640-2010 • E-mail: Ravalli@MontanaNet.com
Second class postage paid at Hamilton, MT under publication #146060.
Published by Ravalli Republic at 232 Main Street Hamilton, every
morning except Saturdays & Sundays and on national holidays. Pros-
tutors, please send change of address to Ravalli Republic, 232 W.
Main, Hamilton, MT 59840-2302. The entire contents of the Ravalli
Republic are copyrighted by Pulitzer Community Newspapers, Inc.,
1996. No part of this newspaper may be reproduced without the specific
consent of the publisher.

Editorial

What were they thinking?

The Montana Supreme Court's ruling that the 1994 conviction of David Lambert — a drunk driver of considerable experience — for criminal endangerment following a head-on collision on Highway 93 was shocking. Surely the Justices must understand that this kind of legal hair splitting will only serve to erode public confidence in Montana's judicial branch.

Lambert — a veteran of 38 previous traffic offenses including nine DUIs — and described as "blind drunk" hopped into his car at a valley bar in August 1994 and drove down the wrong side of Highway 93 causing a head-on collision. Prosecutors, in their efforts to get this repeat-offender off the road, went for the more serious charge of criminal endangerment instead of hanging DUI offense No. 10 on Lambert's sordid driving record.

Criminal endangerment requires a higher standard of evidence for conviction. Specifically the law states that the defendant "knowingly engaged in conduct that creates a substantial risk of death or serious bodily injury to another."

The court ruled that while Lambert knowingly drove his car while under the influence, the prosecution did not prove that he knew his behavior created a substantial risk of death. One has to wonder what planet the Supreme Court is currently occupying to reach such a conclusion. We are bombarded daily with messages

through the news, public service announcements, lessons and school, and by plain-old-common sense that driving under the influence of alcohol clearly constitutes a risk of death or serious injury to others on the road. And surely, Lambert received stern judicial lectures on that very subject each of the nine previous times he was convicted of a DUI offense.

We can only hope that by reviewing the Lambert decision, the Supreme Court's concerns about proof of Lambert's knowledge of the dangers he was inflicting on others can be satisfied. Maybe through this process the Lambert decision will be upheld, and solidified, establishing a precedent that will allow future convictions on criminal endangerment charges for habitual DUI offenders.

Until then most of us will be scratching our heads, wondering if the court understands that the law isn't just a set of abstract principles, but a set of rules designed to preserve the safety and rights of all citizens. Citizens like the innocent woman and children Lambert plowed into in the summer of 1994.

Rob Breeding
managing editor

Commentary

Bob Dole's hidden worry

By WILLIAM A. RUSHER

One of the abiding mysteries of the recent presidential campaign was Sen. Dole's reluctance to use the "character issue" against President Clinton. Here was a president who had, all too clearly, betrayed his wife repeatedly while governor of Arkansas — and not just occasionally or episodically, but by conducting affairs with other women over periods of years.

And if such sexual escapades were to be deemed irrelevant to Mr. Clinton's conduct as president, there

issue." Also, Mr. Dole had to be prepared for the topic to pop up, without warning, on any interview program he consented to participate in.

Imagine the torment Mr. Dole must have felt being urged, on all sides, to go after Mr. Clinton on the "character issue," while knowing that to do so would bring down on his head the deadly rebuttal that people who live in glass houses shouldn't throw stones.

Instead, Sen. Dole never raised the Clinton sex scandals at all, confined himself to a few relatively

Letters

Given out

This is an answer Hamilton's town Christmas tree crooked and limbs

This tree was given reasons. The tree was brought home from and became a beauty

Because of the way the tree was given donate the tree to Hi

I'm sorry it upset forward to a better

Yvonne M. Miller
Corvallis

It's a beauty

This letter addressed town Christmas tree

I am also like you to the editor. However, me. This so called up so rudely put it, has many years. It was p who no longer remain road construction, th place. The family th donate it to the community tree.

What's beautiful

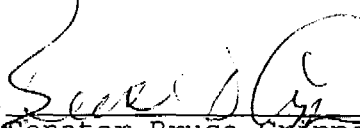


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 11, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 65 (third reading copy -- blue), respectfully report that House Bill 65 be amended as follows and as so amended be concurred in.

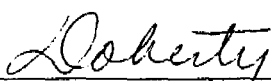
Signed: 
✓ Senator Bruce Crappen, Chair

That such amendments read:

1. Page 1, line 22.
Strike: "SHALL"
Insert: "may"

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

531414SC.STS

**MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE**

ROLL CALL

DATE _____

3/11/97

[illegible]

SEN:1995
wp.rollcall.man
CS-09

DATE 3/11/97
 SENATE COMMITTEE ON Judiciary
 BILLS BEING HEARD TODAY: HB 44, HB 65
HB 339

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
RON ASHABLANEK	STATE FARM INS	HB339	✓	
Mike Frazier	MT Cnty Atty Assoc	HB65	✓	
Mike Miller	MT Dept of Corr.	HB44	✓	
Lois ADAMS	Dpt of CORR	HB44	✓	
Mike Ripperut	Boyd Andrew COCC	HB339	✓	
Albert Goke	MT Dept. of Trans.	HB339	Info ✓	
Darrell Beckstrom	MOTOR VEHICLES	HB339	✓	
John Connor	MT County Atty Assoc	HB65	✓	
Harold Hansen	state DOT Task force	HB339	✓	
Ray McGee	MT Assoc of Chicks	HB339	✓	
Brenda Nordlund	MT Dept of Justice	HB339	✓	
PATRICIA SAINDON	MDT	HB339	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY